

### **REMARKS**

Claims 1-32 are currently pending in this application. Claims 28-32 have been added and support can be found in original Claims 10, 11, 12 and 13. No new matter is added. Reconsideration of the pending claims in view of the arguments/comments below is earnestly requested.

The Examiner has required restriction in the above-identified application as follows:

- Group I: Claims 1-13, drawn to an ex vivo method of treating a vascular disease comprising administering to a blood vessel in vitro a gutless adenovirus comprising a nucleotide sequence encoding a thrombomodulin protein or a variant thereof, classifiable in class 424, subclass 93.21;
- Group II: Claims 14-25, drawn to an in vivo method of treating a vascular disease comprising administering to a mammal a gutless adenovirus comprising a nucleotide sequence encoding a thrombomodulin protein or a variant thereof, classifiable in class 424, subclass 93.2; and
- Group III: Claims 26 and 27, drawn to a composition comprising a gutless adenovirus, classifiable in class 435, subclass 320.1.

For the purpose of examination of this application, Applicants elect, with traverse, Group I, Claims 1-13 for further prosecution at this time. The basis for Applicants' traversal is that there is no undue burden on the Examiner. Section 803 of The Manual of Patent Examining Procedure states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct

inventions.” Applicants therefore respectfully request examination of all currently pending claims.

The Examiner further states that upon electing Group I, Applicants are required to select a species (1) from unmodified hemoglobin, chemically modified hemoglobin or perfluorochemical emulsion; and (2) from L-glutamine, sodium bicarbonate or antibiotic-antimycotic.

For the purpose of examination of this application, Applicants elect, with traverse, the species of unmodified hemoglobin and the species of L-glutamine for further prosecution at this time. Claims 1-13 and 29-32 read on the species of unmodified hemoglobin; and Claims 1-13 and 29-32 read on the species of L-glutamine. The basis for Applicants’ traversal is that there is no undue burden on the Examiner. Applicants noted that it is permitted to claim a reasonable number of species in a single application. 37 C.F.R. § 1.141.

The number of species is very reasonable in this case. In one instance, it is 3, in the other instance, it is 3. The Examiner has not presented any evidence to support the assertion that the species under the claims are patentably distinct. Accordingly, the election of species requirement is believed to be improper, and it should be withdrawn.

Should the Examiner find the elected species allowable, the search should be expanded to include all the species under the claims, which, as stated above, is a reasonable number of species. M.P.E.P. § 809.02(c).

Further, Applicants would like to remind the Examiner that the new Claims 28-32 were paid for on November 30, 2005 as evidenced by the attached date-stamped filing receipt.

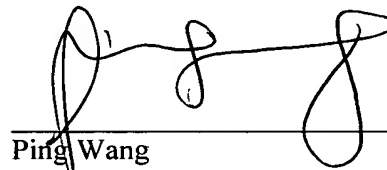
### CONCLUSION

The Applicants submit that the application is now in condition for examination on the merits. Early notification of such action is earnestly solicited. Should the Examiner have any suggestions to place the application in even better condition for allowance, the Applicants request that the Examiner contact the undersigned representative at the telephone number listed below.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to contact Ping Wang, M.D. (Reg. No. 48,328) at the telephone number listed below.

Respectfully submitted,

DLA PIPER RUDNICK GRAY CARY US LLP

A handwritten signature in black ink, appearing to read 'Ping Wang', is written over a horizontal line.

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